INTRODUCED: September 9, 2024

AN ORDINANCE No. 2024-234

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Grant Agreement between the City of Richmond, 6951 Carnation Multifamily, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable residential development located at 6951 West Carnation Street.

Patron –Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 23 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Grant Agreement between the City of Richmond, 6951 Carnation Multifamily, LLC, and the Economic Development Authority of the City of Richmond for the purpose of facilitating the construction of an affordable residential development located at 6951 West Carnation Street. The Grant Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES:	9	NOES:	0	ABSTAIN:	
ADOPTED:	SEP 23 2024	REJECTED:		STRICKEN:	

APPROVED AS TO FORM:

_____

CITY ATTORNEY'S OFFICE

A TRUE COPY:
TESTE:

City Clerk

RECEIVED
By Paula Hackney - City Attorney's Office at 2:53 pm, Aug 29, 2024

City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-0997

File ID:	Admin-2024-0997	**Type:**	Request for Ordinance or Resolution	**Status:**	Regular Agenda
Version:	1	**Reference:**		**In Control:**	City Clerk Waiting Room
Department:		**Cost:**		**File Created:**	08/15/2024
Subject:	Performance Grant 6951 West Carnation Street			**Final Action:**	
Title:					

Internal Notes: Performance Grant for an Affordable Housing Development Project at 6951 West Carnation Street

Code Sections:		**Agenda Date:**	09/09/2024
Indexes:		**Agenda Number:**	
Patron(s):		**Enactment Date:**	
Attachments:	Admin-2024-0997 WD Ordinance 6951 Carnation Street, Admin-2024-0997 6951 Carnation Street - Grant Agreement_AATF8152024	**Enactment Number:**	
Contact:		**Introduction Date:**	
Drafter:	Michelle.Peters@rva.gov	**Effective Date:**	
Related Files:			

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	8/18/2024	Merrick Malone	Approve	8/16/2024
1	2	8/19/2024	Matt Welch	Approve	8/21/2024
1	3	8/19/2024	Alecia Blackwell - FYI	Notified - FYI	
1	4	8/20/2024	Sharon Ebert	Approve	8/21/2024
1	5	8/21/2024	Meghan Brown	Approve	8/22/2024
1	6	8/21/2024	Sheila White	Approve	8/23/2024
1	7	8/21/2024	Cynthia Osborne - FYI	Notified - FYI	
1	8	8/21/2024	Sabrina Joy-Hogg	Approve	8/23/2024
1	9	8/21/2024	Caitlin Sedano - FYI	Notified - FYI	
1	10	8/21/2024	Jeff Gray	Approve	8/23/2024
Notes:	Approved: Out of Office				
1	11	8/21/2024	Lincoln Saunders	Approve	8/30/2024
1	12	8/29/2024	Mayor Stoney	Approve	8/30/2024

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2024-0997

City of Richmond

Intracity Correspondence

O&R Request
DATE: July 8, 2024

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Sabrina Joy-Hogg. DCAO - Finance and

Administration

THROUGH: Sheila White, Director of Finance

THROUGH: Meghan Brown, Director of Budget and Strategic

Planning

THROUGH: Sharon L. Ebert, DCAO - Planning & Economic Development Portfolio

THROUGH: Matthew Welch, Acting Director of Economic Development

FROM: Merrick Malone, Acting Director of Housing and Community

RE: Approval of a Performance Grant for an Affordable Housing Development Project

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer ("CAO") to execute, for and on behalf of the City of Richmond ("City"), the Grant Agreements attached hereto by and between the City, the Economic Development Authority ("EDA"), and the following recipient:

- Lynx Ventures, Inc.

REASON: Council approval is necessary to authorize the City's execution of the Grant Agreement.

RECOMMENDATION: The City Administration recommends approval.

BACKGROUND: In 2022, the Virginia General Assembly approved HB1194, which amended Ch. 49, Title 15.2 of the Code of Virginia for the purpose of authorizing industrial/economic development authorities "to make grants associated with the construction of affordable housing in order to promote safe and affordable housing in the Commonwealth."

These Grant Agreements will induce the Recipients to construct and operate development projects (the "Project") that will result in significant investment and economic development on the sites located at the identified addresses in **Attachment A** and will promote safe and affordable housing in the City, and result in substantial benefits to the welfare of the City and its inhabitants, as well as is in the public interest, and serves governmental interests:

Grant payments will be solely limited to incremental real estate tax revenues generated by the Project and received by the City and such payments will be conditioned upon the Recipients' completion of Project construction and continued maintenance thereafter. To qualify for grant payments, the Projects each must include at least the number of residential units that restrict occupancy and rents to identified AMIs, according to standards promulgated by the State Housing Finance Agency (i.e., Virginia Housing), for a minimum of thirty (30) years. See **Attachment A**.

FISCAL IMPACT / COST: The one-year fiscal impact is estimated based on the projected construction costs as a proxy for the assessed value of the property at the time of the commencement of the Grant Period. The current assessed value, prior to the commencement of the Grant Period, does not account for the development of new real estate and vastly under-values the assessment of the property at the time of commencement of the Grant Period. The true baseline for incremental tax revenues will be determined at the time of commencement of the Grant Period.

The real estate tax revenue today, based on 2024 assessed value, would be $3,876.00 and the estimated real estate tax revenue at the time of commencement of the Grant Period would be $354,000.00. As such the increase from the Effective Date to the first year of the Grant Period would be $350,124.00. This is not the incremental increase that is to be paid to the grant Recipient for each year of the Grant Period. The Incremental Real Estate Tax Revenue upon commencement of the Grant Period can only be accurately determined from the true assessment value of the property at the time of the commencement of the Grant Period. The City of Richmond's average assessed value increased 7.6% between 2023 and 2024. As such a property producing $354,000.0 in Real Estate Tax Revenue in 2023 would produce approximately $380,904.00 in Real Estate Tax Revenue in 2024 making the one-year Incremental Real Estate Tax Revenue $26,904.00 between 2023 and 2024. Based on recent

trends, it is assumed that property value assessments in the City of Richmond will continue to increase in the coming years. However, the future rate of increase is unknown at this time. This estimate was calculated at the real estate tax rate of $1.20 per $100 of assessed value and does not account for Special Assessment District rates.

FISCAL IMPLICATIONS: The approval of this performance grant will allow the City to meet one of its primary affordable housing goals, to produce new affordable housing units that are critically needed as evidenced by the City's declaration of a "housing crisis". There are no direct fiscal implications as the grant payments are solely limited to incremental tax revenues above and beyond the identified baselines of current real estate tax revenues received by the City for such baselines for each of the projects.

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: September 9, 2024

CITY COUNCIL PUBLIC HEARING DATE: September 23, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A

AFFECTED AGENCIES: Housing & Community Development,
Economic Development, Finance, Budget, City Attorney's Office

RELATIONSHIP TO EXISTING ORD. OR RES.: N/A

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Grant Agreement for the proposed recipient.

STAFF: Matthew Welch, Acting Director of Economic Development
Merrick Malone, Acting Director of Housing and Community

Attachment A

GRANT AGREEMENT

This **GRANT AGREEMENT** (this "Agreement") is made and entered this ____ day of _____, 2024 (the "Effective Date"), by and among the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the "City"), 6951 CARNATION MULTIFAMILY, LLC, or its assigns or successors (the "Recipient"), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND**, a political subdivision of the Commonwealth of Virginia (the "Authority").

RECITALS

A. The Recipient plans to develop and operate on the Site, as defined below, the Project, as defined below.

B. In connection with its development of the Project, Recipient intends to divide the Assemblage and create the Site, whereupon the Site will be designated as a parcel in the tax records of the City and assigned a tax parcel identification number.

C. The City and the Authority have determined that the Project will result in significant investment and economic development on the Site, will promote safe and affordable housing in the City of Richmond, will result in substantial benefits to the welfare of the City and its inhabitants, is in the public interest, and serves governmental interests.

D. The City plans to fund an economic development monetary grant (the "Grant") by the Authority to the Recipient for the purpose of inducing the Recipient to construct and operate the Project in the City of Richmond.

E. Payment of the Grant will be conditioned upon the Recipient's completion of Project construction or rehabilitation and continued maintenance of the Project, as defined herein, and the funds comprising payments of the Grant will be solely limited to a portion of the incremental real estate tax revenues for the Site generated by the Project (i.e., including both the fee interest (and leasehold interest, if applicable) in the land and all improvements), all as set forth herein.

F. The City is authorized by Section 15.2-953 of the Code of Virginia and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Chapter 49, Title 15.2 of the Code of Virginia and other laws to perform the activities contemplated in this Agreement. The Authority is authorized by the Code of Virginia to make grants to non-public organizations such as Recipient in furtherance of the purpose of promoting economic development and affordable housing.

G. This Agreement sets forth the understanding of the parties concerning the Recipient's obligations, the Authority's obligations, and the incentives offered by the City, subject to the approval of the Authority's Board and the Richmond City Council and subject to appropriations.

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Preliminary Provisions

1.1 Incorporation of Recitals. The foregoing recitals are incorporated herein by reference.

1.2 Definitions. For the purposes of this Agreement, the following terms shall have the following definitions:

"AMI" means area median gross income for the Richmond-Petersburg Metropolitan Statistical Area for the applicable year of the Grant Period.

"Base Real Estate Tax Revenue" means $3,876.00 per year, being the amount equal to the real estate taxes levied on the Site for the current tax year as of the Grant Commencement Date. For the avoidance of doubt, the Base Real Estate Tax Revenue is calculated based on the tax rate of $1.20 per every $100.00 of assessment value attributed to the portions of the Assemblage that comprise the Site, with thirty percent (30.0%) of the real estate taxes levied on Parcel No. C0050879008 included in the figure above.

"Grant" means a grant to be paid to the Recipient, or its successors or assigns, by the Authority pursuant to this Agreement.

"Grant Payment" means, for each real estate tax year during the Grant Period, an amount equal to one hundred percent (100%) of the Incremental Real Estate Tax Revenue for such corresponding tax year. The Parties acknowledge that the annual real estate tax levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein "Grant Payment" shall include payments of Incremental Real Estate Tax Revenue for each installment payment corresponding to the applicable Real Estate Tax Levy.

"Grant Payment Request" means a written request for a Grant Payment, which shall include (1) documentation showing its full payment of the Real Estate Tax Levy (including all applicable penalties and interest), and (2) the amount of the requested Grant Payment and explanation of the calculation thereof (i.e., Real Estate Tax Levy *minus* Base Real Estate Tax Revenue *equals* Incremental Real Estate Tax Revenue, as pro-rated for the applicable installment period).

"Grant Period" means that certain period commencing upon January 1st of the first real estate tax year following Recipient's completion of Project construction or rehabilitation, as shall be evidenced by receipt of a temporary Certificate of Occupancy ("Grant Commencement Date") and ending on last day of the thirtieth (30th) real estate tax year following the Grant Commencement Date ("Grant Expiration Date"). The parties acknowledge that the "Real Estate Tax Levy" for the last year of the Grant Period may not be received by the City until after the Grant Expiration Date, and that a Grant Payment shall be paid to the Recipient corresponding to such Real Estate Tax Levy.

"Grant Management Fee" means one time non-refundable fee and an annual payment equal to 1% of the Grant Payment to cover the administrative expenses of the Authority for managing the Grant during the Grant Period.

"Incremental Real Estate Tax Revenue" means, for each applicable real estate tax year during the Grant Period, the amount by which the Real Estate Tax Levy exceeds the Base Real Estate Tax Revenue, provided the Recipient pays the Real Estate Tax Levy to the City in full (including any applicable penalties and interest for late payment in accordance with any applicable provision of the Richmond City Code), subject to the applicable cure periods. The Parties acknowledge that the Real Estate Tax Levy is and may in the future be billed and due in installments (currently twice a year); therefore, as used herein "Incremental Real Estate Tax Revenue" shall be determined based on the applicable payment (or installment) of the Real Estate Tax Levy for each applicable real estate tax year.

"Investor" means Lynx Ventures, Inc.

"Land Records" means the Clerk's Office of the Circuit Court of the City of Richmond, Virginia.

"Maintain" means the Recipient's continued maintenance and operation of the Project following completion of Project construction or rehabilitation, as set forth by Section 2.3.2 of this Agreement.

"Mortgage" means any mortgage, deed of trust, deed to secure debt or other similar instrument created for the purpose of securing indebtedness of Recipient, and recorded among the Land Records, or any mortgage, deed of trust, deed to secure debt or other similar instrument created for the purposes of refinancing such indebtedness and recorded among the Land Records.

"Mortgagee" means the secured party under a Mortgage.

"Project" means a development on the Site containing not less than 128 residential units, subject to income and rent restrictions as shown on **Exhibit A** and monitored by the State Housing Finance Agency.

"Real Estate Tax Levy" means the amount of real estate taxes levied by the City on the Site (including both the fee interest (and leasehold interest, if applicable) and Project (i.e., including land and all improvements) for a given real estate tax year, pursuant to Chapter 26 of the Code for the City of Richmond ("City Code").

"Recipient" means 6951 Carnation Multifamily, LLC, and its successors and assigns, to the extent permitted by this Agreement.

"Site" means, that certain parcel of 2.648 acres currently owned by 6951 Carnation Acquisition LLC located respectively at 6951 W Carnation Street Richmond, Virginia 23225 and currently referred to in the records of the City Assessor as Parcel Nos. C0050879008.

"State Housing Finance Agency" means Virginia Housing (formerly known as Virginia Housing Development Authority), a political subdivision of the Commonwealth of Virginia, or its successor.

Section 2. Recipient's Obligations

2.1 Grant Management Fee.

The Recipient shall pay a Grant Management Fee consisting of (i) a one-time, non-refundable $500.00 fee immediately upon execution of the agreement to the Authority, and, (ii) thereafter, the Recipient shall pay annually to the Authority 1% of the Grant Payment for the duration of the Grant Period. The Authority will invoice the Recipient on or before October 1 of each year and the Recipient shall remit payment within 30 days of issuance of the invoice.

2.2 Completion of Project Construction or Rehabilitation; Timeline.

2.2.1 Plan of Development. Recipient shall submit a Plan of Development or similar permit submission for the Project to the City's Director of Planning and Development Review no later than nine (9) months of the Effective Date, which shall comply with the relevant provisions of the Richmond City Code and shall contain all elements of the Project as defined herein.

2.2.2 Commencement of the Project Construction or Rehabilitation. Recipient shall commence construction or rehabilitation of the Project within eighteen (18) months of the Effective Date, (the "Construction Commencement Date"), which shall be evidenced by the issuance of all permits necessary for the commencement of construction or rehabilitation of the Project.

2.2.3 Completion of Project Construction or Rehabilitation. Recipient shall complete the Project within three (3) years of the Construction Commencement Date, which shall be evidenced by the issuance of a temporary certificate of occupancy for the Project.

2.2.4 Failure to Comply. If the Recipient fails to timely comply with any of the provisions of this Section 2.2 then the City's Chief Administrative Officer ("CAO"), in his sole discretion, may either extend the time by which Recipient must comply with the corresponding requirement or provide written notice of the City's intent to terminate this Agreement. If Recipient fails to cure its failure to comply within sixty (60) days of such written notice then this Agreement, including all rights and obligations herein, shall, upon the City's election and subject to the rights of a Mortgagee under Section 6.3 hereof, terminate and neither the City nor the Authority shall have any further obligation to the Recipient and Recipient shall no longer be eligible for any Grant Payments hereunder.

2.3 Continued Maintenance and Operation of Project.

2.3.1 Continued Control of the Project by Recipient. Recipient shall continue to own, lease, or otherwise control the Site until completion of Project construction or rehabilitation pursuant to Section 2.2.3 of this Agreement and thereafter shall continue to own, lease, or otherwise control the Project until expiration of the Grant Period. Notwithstanding the foregoing, Recipient may transfer the ownership or control interest in the Project to third parties ("Transferee"), and Recipient may (1) assign this Agreement, including the rights and obligations herein to such party or parties at the time it transfers

ownership or control of the Project (including any leasehold interests), and (2) if this Agreement is assigned, Recipient shall provide the City and Authority 30 days' prior written notice of its intent to transfer ownership or control of the Project, which notice shall include the contemplated date of transfer, the name of the party or parties to which it intends to transfer, and a written statement from such party that it is aware that this Agreement, including the rights and obligations herein, will be assigned to such party. Following the transfer of ownership or control in the Project to the Transferee as provided above, the term "Recipient" as used herein shall mean the Transferee. For the avoidance of doubt, this Section 2.3.1 shall not apply to any transfer by foreclosure or deed-in-lieu of foreclosure or to any transfer of interests in Recipient or the exercise by Investor of its rights to remove the general partner or managing member of Recipient and any such transfer shall not require notice to nor the consent of the City or Authority.

2.3.2 Continued Maintenance and Operation of the Project. Following Recipient's completion of Project construction or rehabilitation as set forth in Section 2.2.3 of this Agreement, the Recipient shall continue to Maintain the Project until the expiration of the Grant Period.

2.4 MBE Participation.

2.4.1 Goal. The Recipient agrees to diligently work towards the following goal: Where capacity, capability and competitive pricing among minority business enterprises and emerging small businesses exists, 30% of all expenditures for those construction or rehabilitation costs of the Project that will be paid to third party subcontractors unaffiliated with the Recipient will be spent with minority business enterprises and emerging small businesses that perform commercially useful functions with regard to the prosecution and completion of the Project. The terms "minority business enterprise" and "emerging small business" have the meaning ascribed to them in Chapter 21 of the City Code. The Recipient shall include this goal in its contracts with all assignees, contractors and subcontractors who will be providing any portion of the Project.

2.4.2 Reporting. To enable the City to measure the achievements of the Recipient and its assignees, contractors and subcontractors with regard to the participation goals set forth above, during the period prior to completion of Project construction or rehabilitation, the Recipient shall submit a report upon request detailing all expenditures with minority business enterprises and emerging small businesses, showing, at a minimum, (i) the name of the business, (ii) an itemization of what the business provided, (iii) the amount paid for each item, (iv) the total amount of spending to date with minority business enterprises and emerging small businesses and (v) the percentage of total expenditures for the quarter spent with minority business enterprises and emerging small businesses. If the City chooses, the Recipient shall submit these reports on forms prescribed by the City. The City will use these reports in evaluating the good faith minority business enterprise and emerging small business participation efforts, as defined in Section 21-4 of the City Code, of the Recipient and its assignees, contractors, and subcontractors that compete for City contracts.

2.5 Affordable Housing.

The Recipient agrees to restrict occupancy and rents of the Project according to the schedule shown on **Exhibit A**, according to standards promulgated by the State Housing Finance Agency or as otherwise approved by the Authority. Ongoing compliance monitoring and approvals by the State Housing Finance Agency, as provided to the City upon the City's request, shall serve as evidence of the Recipient's compliance with this section.

2.6 Continued Investment and Capital Improvements

For purposes of continued investment and upkeep of the Project to the benefit of its tenants, payment of Grant Payments subsequent to the initial fifteen (15) years of the Grant Period shall be contingent upon receipt of proof that the Recipient has made capital improvements to the Project in an aggregate amount of one-million five-hundred ten thousand and No/100 Dollars ($1,510,000.00) since the Grant Commencement Date. On each fifth anniversary of the Grant Commencement Date, the Recipient shall upon request submit a report of capital improvements made to the Project since the Grant Commencement Date.

Section 3. Disbursement of Grant.

3.1. Grant. During the Grant Period, the City shall pay to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), through the Authority, the Grant Payments for such real estate tax year subject to the provisions of this Section 3.

3.2. Grant Payment Requests. The Recipient shall submit each Grant Payment Request to the CAO, with copies to the Department of Economic and Community Development, the Authority, and the Office of the City Attorney at the respective addresses set forth in Section 8.

3.3. Disbursement of Grant Payment. Upon receipt of a Grant Payment Request, the City shall review the accuracy of the request. The City shall not make a Grant Payment if Recipient did not make full and timely payment (except when all penalties and interest for late payment have been paid in accordance with any applicable provisions of the Richmond City Code), of the Real Estate Tax Levy for the applicable installment and shall not make a Grant Payment if Recipient is delinquent in payment (except when all penalties and interest for late payment have been paid in accordance with any applicable provision of the Richmond City Code) of any other taxes levied by the City for the Project. Within fifteen (15) business days of receipt of a Grant Payment Request, the City shall notify Recipient either that (1) the City denies the request and will not make a Grant Payment for the foregoing reasons, (2) the City approves the request and intends to make a Grant Payment in the amount requested, or (3) the City approves making a payment to Recipient but in a different amount than the amount requested because the amount requested is inconsistent with this Agreement, in which case the City shall indicate the correct Grant Payment amount it intends to make. Notwithstanding the foregoing, the City's failure to respond within fifteen (15) business days shall not constitute approval of a requested Grant Payment and the Recipient shall not be entitled to any such payment due solely to the City's failure to timely respond. Subject to any necessary City Council action, including

any necessary budget amendment or appropriation of funds, the City agrees to, within fifteen (15) business days of the City's approval of any Grant Payment, transfer the funds for the Grant Payment to the Authority. The Authority agrees, subject to any necessary approvals by its Board of Directors, to pay the Grant Payment to Recipient (or such party to which Recipient has assigned Grant Payments pursuant to Section 9.1 of this Agreement), within fifteen (15) business days of receipt of the funds from the City.

3.4 **Recipient's Relief.** Should Recipient believe the City failed to comply with Section 3.3 of this Agreement, Recipient may seek relief in accordance with Section 9.2 of this Agreement. Provided, however, Recipient's sole remedy shall be to receive payment for a Grant Payment to which it was entitled (subject to the restrictions set forth in this Agreement, including, but not limited to, Sections 3.3 and 9.5) and for which it did not receive payment.

Section 4. General Administration of Grant

4.1 The City agrees to transfer to the Authority, as and when appropriated by the City Council, the funds necessary for the Authority to meet its obligations under this Agreement relating to the Grant. No administrative fees or expenses shall be paid by the City.

4.2 The Authority's obligation to undertake the activities herein is specially conditioned upon the City providing funding to the Authority on a timely basis; provided, however, the City's obligation to provide funding to the Authority is subject to appropriation by the City Council and availability of funds.

4.3 The Authority agrees to provide the CAO, or the designee thereof, with copies of all documents related to this Agreement and will keep the CAO fully and timely informed of all matters related to this Agreement.

4.4 The Authority agrees that all funds transferred by the City to the Authority for the Grant shall be deposited by the Authority within a Project Fund [***Define***], to be used only to satisfy the obligations contained in this Agreement related to the Grant.

4.5 It is the intent of the parties not to impose upon the Authority any responsibility, duty, or obligation other than what may be required to implement the Grant as set forth in this Agreement. Accordingly, the Authority does not assume any responsibility or liability whatsoever except as specifically stated in this Agreement. If litigation involving the Grant is initiated or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and CAO.

4.6 The Authority shall keep records of its financial transactions, if any, related to this Agreement in accordance with generally accepted accounting principles. The City Auditor or his designee may at any time audit the financial transactions undertaken under this Agreement. The Authority shall cooperate to ensure that the City Auditor is granted reasonable access on a timely basis to all books and records of the Authority necessary to complete such audits.

4.7 The Authority shall not be required to furnish the City a blanket corporate

fidelity bond with surety.

Section 5. **Representations of the Recipient**

5.1 The Recipient is empowered to enter into this Agreement, to be bound hereby, and to perform according to the terms hereof.

5.2 Any and all actions necessary to enable the Recipient to enter into this Agreement, and to be bound hereby, have been duly taken.

5.3 The person or persons executing or attesting the execution of this Agreement on behalf of the Recipient has or have been duly authorized and empowered to so execute or attest.

5.4 The execution of this Agreement on behalf of the Recipient will bind and obligate the Recipient to the extent provided by the terms hereof.

5.5 There exists no litigation pending against the Recipient or to the Recipient's knowledge threatened, which if determined adversely, would materially and adversely affect the ability of the Recipient to carry out its obligations under this Agreement or the transactions contemplated hereunder.

Section 6. Default.

6.1 Events of Default. Each of the following events (hereinafter called an "Event of Default") shall be a default hereunder by the Recipient as described:

6.1.1 Failure by the Recipient to maintain its corporate existence or the declaration of bankruptcy by the Recipient;

6.1.2 The failure of Recipient to comply with Section 2 of this Agreement; and

6.1.3 The failure of Recipient to pay the annual Real Estate Tax Levy.

6.2 Effect of Event of Default. Subject to Section 6.3 below, in the case of an occurrence of an Event of Default, the Grant provisions of Section 3 of this Agreement shall, at the City's option, terminate thirty (30) days after the City's notice to Recipient, each Mortgagee and Investor, unless Recipient cures the Event of Default to the City's satisfaction within such thirty (30) days, and neither the City nor the Authority shall have any further obligation relating thereto and the Recipient shall no longer be eligible for any Grant Payments hereunder.

6.3 Notice and Right to Cure. Written notice of any default by Recipient under this Agreement shall be provided simultaneously to any Mortgagee and Investor. Each Mortgagee and the Investor shall be permitted to cure any default by Recipient under this Agreement. Such Mortgagees and Investor shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Recipient after the giving of such notice to Recipient, plus an additional thirty (30) days, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. If the default cannot be reasonably cured within thirty (30) days, then the Mortgagee or Investor, as applicable, shall have such additional time as it shall reasonably require so long as the Mortgagee or Investor, as

applicable, is proceeding with reasonable diligence to cure the default. The City and the Authority each agree to accept payment or performance by any Mortgagee or Investor as though the same had been done by Recipient.

Section 7. Recipient Reporting.

The Recipient shall provide, at Recipient's expense, detailed updates and verification reasonably satisfactory to the City of Recipient's progress regarding completion of Project construction or rehabilitation and, following Project construction or rehabilitation, of Recipient's continued compliance with Section 2.3 of this Agreement.

Section 8. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail or overnight courier package not accepted by the addressee):

if to the Recipient, to:

6951 Carnation Multifamily, LLC
7 East 2nd Street
Richmond, VA 23224
Attention: John Gregory

with a copy to:

Brian K. Jackson, Esq.
Hirschler Fleischer, P.C.
2100 East Cary Street
Richmond, VA 23223

if to the City, to:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street Suite 201
Richmond, VA 23219

with a copy to:

Department of Economic Development
City of Richmond, Virginia
1500 East Main Street
Richmond, VA 23219

if to the Authority, to:

Economic Development Authority
of Richmond VA – Attn: Chairman
501 East Franklin Street
Richmond, VA 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street Suite 300
Richmond, VA 23219

Section 9.General Terms and Conditions.

9.1 Entire Agreement; Amendments; Assignments. This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto, and subject to the prior written consent of each Mortgage and Investor. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including, without limitation, a Mortgagee or its designee upon a foreclosure or deed-in-lieu of foreclosure of the Site or the Project; provided, however, that in no event may this Agreement or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred or otherwise disposed of

without the prior written consent of the other, which consent neither party shall be obligated to give, except that Recipient may assign its right to receive payment to another entity authorized to transact business in Virginia by furnishing the City and the Authority with notice identifying the entity and providing both contact and payment information in a form acceptable to the City and the Authority. Notwithstanding anything to the contrary herein, (a) Recipient shall have the right to assign its interest in the Site and Project to any future owner provided the Recipient first shall have complied with the requirements set forth in Section 2.3.1 of this Agreement and shall have submitted to the City the form of all instruments by which it purports to make such assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld, in which event the assignor shall be released from all obligations and liabilities under this Agreement; and (b) Recipient shall have the right to grant to a Mortgagee a security interest in, and assignment of, Recipient's rights hereunder as collateral for the loan to be provided by such Mortgagee for the development of the Project, and any action taken by such Mortgagee to realize on such security interest or assignment and performance thereafter shall be deemed permitted under this Agreement, provided the Recipient first shall have submitted to the City the form of all instruments by which it purports to grant such security interest and assignment and shall have obtained the City's prior written approval thereof, which approval shall not be unreasonably withheld. Neither the City's nor Authority's consent shall be required to the exercise by Mortgagee or any assignee of Mortgagee of its right to perform Recipient's obligations hereunder after a default by Recipient under the applicable loan documents. The City agrees that Mortgagee shall not have any liability for any act or omission of Recipient hereunder and shall only be liable hereunder for obligations arising during such time as it is the owner of Recipient's interests in the Site and Project pursuant to foreclosure, deed in lieu of foreclosure or otherwise. For the avoidance of doubt, no transfer by foreclosure or deed-in-lieu of foreclosure pursuant to a Mortgage and no transfer of interests in Recipient or the exercise by Investor of its rights to remove the general partner or managing member of Recipient shall require notice to or the approval of the City or Authority.

9.2 Governing Law; Venue. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Agreement, or the rights and obligations of the parties shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. All disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceedings arising from this Agreement.

9.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

9.4 Severability. If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

9.5 Subject-to-Appropriations. All payments and other performances by the City and the Authority under this Agreement are subject to City Council approval, Authority Board approval and annual appropriations by the City Council. It is understood and agreed among the parties that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's or the Authority's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

9.6 Public Disclosure.

9.6.1 Applicable Law. The parties to this Agreement acknowledge that records maintained by or in the custody of the City and the Authority are subject to the provisions of the Virginia Public Records Act, Va. Code §§ 42.1-76 through 42.1-90.1, and the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 2.2-37 14 and thus are subject to the records retention and public disclosure requirements set forth in those statutes.

9.6.2 Challenges to Nondisclosure. If a party submitting records to the City or the Authority requests that those records not be disclosed under applicable law and the City or the Authority consequently denies a request for disclosure of such records based on the submitting party's request, and the City's or the Authority's denial of a request for disclosure of records is challenged in court, the submitting party shall indemnify, hold harmless and defend the City or the Authority, their respective officers and employees from any and all costs, damages, fees and penalties (including attorney's fees and other costs related to litigation) relating thereto.

9.7 No Waiver. Neither failure on the part of the City or the Authority to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the City or the Authority to enforce the same right in the event of any subsequent default.

9.8 Effective Date of the Agreement. The effective date of this Agreement shall be the date upon which it has been fully executed by the parties following approval by the City Council and by the Authority's Board of Directors.

9.9 No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to this Agreement as the agent or representative of any other party to this Agreement for any purpose.

9.10 No Third-Party Beneficiaries. Except as otherwise provided in Section 9.1 of this Agreement, the parties agree that except for any Mortgagee and Investor (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, or the Recipient; (iii) no other individual or entity shall obtain any right to make any claim against the City, the Authority, or the Recipient under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. Each Mortgagee and Investor shall be a third-party beneficiary of this Agreement.

9.11 Signature Authority. Except as specifically otherwise set forth in this Agreement, the CAO or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement as of the date first written above.

CITY OF RICHMOND, VIRGINIA, a municipal corporation of the Commonwealth of Virginia

By:_____
J.E. Lincoln Saunders Date
Chief Administrative Officer

Authorized by Ordinance No._____

Approved as to Form:

By:_____
City Attorney's Office

6951 Carnation Multifamily LLC, a Virginia limited liability Company

By:_____
Date

Name: _____
Title: _____

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF RICHMOND, VIRGINIA, a political subdivision of the Commonwealth of Virginia

By: _____
Chairman Date

Approved as to Form:
By:_____
General Counsel to the Authority

EXHIBIT A

Affordable Housing Schedule

The Project shall restrict occupancy and rents to an average income designation of 60% of AMI, according to standards promulgated by the State Housing Finance Agency, for a minimum of thirty (30) years.